

1 Matthew Franklin Jaksa (CA State Bar No. 248072)  
2 HOLME ROBERTS & OWEN LLP  
3 560 Mission Street, 25<sup>th</sup> Floor  
4 San Francisco, CA 94105-2994  
5 Telephone: (415) 268-2000  
6 Facsimile: (415) 268-1999  
7 Email: matt.jaksa@hro.com

8  
9 Attorneys for Plaintiffs,  
10 SONY BMG MUSIC ENTERTAINMENT;  
11 UMG RECORDINGS, INC.;  
12 INTERSCOPE RECORDS; WARNER  
13 BROS. RECORDS INC.; and ARISTA  
14 RECORDS LLC

15 UNITED STATES DISTRICT COURT  
16 NORTHERN DISTRICT OF CALIFORNIA  
17 SAN FRANCISCO DIVISION

18 SONY BMG MUSIC ENTERTAINMENT, a  
19 Delaware general partnership; UMG  
20 RECORDINGS, INC., a Delaware corporation;  
21 INTERSCOPE RECORDS, a California general  
22 partnership; WARNER BROS. RECORDS  
23 INC., a Delaware corporation; and ARISTA  
24 RECORDS LLC, a Delaware limited liability  
25 company,

26 Plaintiffs,

27 v.

28 JOHN DOE #3,

Defendant.

CASE NO. 3:07-CV-04837-EMC

**Honorable Edward M. Chen**

***EX PARTE APPLICATION TO CONTINUE  
CASE MANAGEMENT CONFERENCE  
AND EXTEND TIME TO SERVE  
DEFENDANT AND [PROPOSED] ORDER***

1 Plaintiffs respectfully request that the Court continue the case management conference  
2 currently set for January 23, 2008, at 1:30 p.m. to April 23, 2008. Plaintiffs further request, pursuant  
3 to the Federal Rules of Civil Procedure, Rules 4(m) and 6(b)(1)(A), that the Court grant an  
4 additional 90 days to serve Defendant with the Summons and Complaint. As further explained  
5 below, Plaintiffs only recently discovered the identity of the Doe defendant in this case, and have not  
6 yet filed an amended complaint naming this individual or served Defendant with the summons and  
7 complaint. In support of their request, Plaintiffs state as follows:

8 1. The initial case management conference is set for January 23, 2008, at 1:30  
9 p.m. The Court, acting of its own accord, previously rescheduled the case management conference  
10 from the originally scheduled date of December 26, 2007. The current deadline for service of  
11 process is January 18, 2008.

12 2. Plaintiffs filed their Complaint for Copyright Infringement against Defendant  
13 John Doe #3 (“Defendant”) on September 20, 2007. Plaintiffs did not have sufficient identifying  
14 information to name Defendant in the Complaint, but were able to identify Defendant by the Internet  
15 Protocol address assigned to Defendant by Defendant’s Internet Service Provider (“ISP”) – here,  
16 Santa Clara University.

17 3. In order to determine Defendant’s true name and identity, Plaintiffs filed their  
18 *Ex Parte* Application for Leave to Take Immediate Discovery on September 20, 2007, requesting  
19 that the Court enter an Order allowing Plaintiffs to serve a Rule 45 subpoena on the ISP.

20 4. The Court entered an Order for Leave to take Immediate Discovery on  
21 November 20, 2007, which was promptly served upon the ISP along with a Rule 45 subpoena.

22 5. On January 8, 2008, the ISP responded to Plaintiffs’ subpoena, providing  
23 Plaintiffs with identifying information including Defendant’s name, telephone number, and address.

24 6. Now that Plaintiffs believe they have identified the Doe defendant, they will  
25 send Defendant written notice of their copyright infringement claim and attempt to resolve the  
26 dispute without further litigation. If efforts to resolve the dispute fail, Plaintiffs plan to file a First  
27  
28

1 Amended Complaint naming Defendant individually. However, Plaintiffs wish to first give  
2 Defendant a reasonable period of time to resolve this matter before naming him in a federal lawsuit.

3       7. There is not a sufficient amount of time prior to the service deadline for  
4 Plaintiffs to notify Defendant of their claim, attempt to resolve the dispute, and/or amend the  
5 complaint to name Defendant individually and serve Defendant with the Summons and Complaint.

6       8. Given the circumstances of this case, a case management conference is  
7 unnecessary at this time, and Plaintiffs respectfully request that the case management conference be  
8 continued to April 23, 2008. Plaintiffs also respectfully request an additional 90 days to effectuate  
9 service.

10       9. Plaintiffs submit that filing their *Ex Parte* Application for Leave to Take  
11 Immediate Discovery demonstrates “good cause” under Rule 4 for an extension of time for service.  
12 *See Ritts v. Dealers Alliance Credit Corp.*, 989 F. Supp. 1475, 1479 (N.D. Ga. 1997) (stating good  
13 cause standard for service extensions). Unlike a traditional case in which the defendant is known by  
14 name and efforts to serve can begin immediately after filing the complaint, in this case Plaintiffs first  
15 had to obtain the identity of Defendant through the subpoena to the ISP, a process that was only  
16 recently completed. This Court has discretion to enlarge the time to serve even where there is no  
17 good cause shown. *Henderson v. United States*, 517 U.S. 654, 658 n. 5 (1996).

18       10. Because the copyright infringements here occurred in 2007, the three-year  
19 limitations period for these claims has not expired. *See* 17 U.S.C. § 507(b) (2000). There can thus  
20 be no prejudice to the Defendant from any delay in serving the Complaint.

1           11. Plaintiffs will provide the Defendant with a copy of this request and any Order  
2 concerning this request when service of process occurs.

3  
4 Dated: January 14, 2008

HOLME ROBERTS & OWEN LLP

5  
6 By: \_\_\_\_\_ */s/ Matthew Franklin Jaksa*  
7 MATTHEW FRANKLIN JAKSA  
8 Attorney for Plaintiffs  
9 SONY BMG MUSIC  
10 ENTERTAINMENT; UMG  
11 RECORDINGS, INC.; INTERSCOPE  
RECORDS; WARNER BROS.  
RECORDS INC.; and ARISTA  
RECORDS LLC

12  
13  
14 **[PROPOSED] ORDER**

15 Good cause having been shown:

16       **IT IS ORDERED** that the case management conference currently set for January 23, 2008,  
17 at 1:30 p.m. be continued to April 23, 2008.

18       **IT IS FURTHER ORDERED** that, pursuant to the Federal Rules of Civil Procedure, Rules  
19 4(m) and 6(b)(1), Plaintiffs' time to serve the Summons and Complaint on Defendant be extended to  
20 April 17, 2008.

21  
22  
23 Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Honorable Edward M. Chen  
United States Magistrate Judge